

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

UNITED STATES OF AMERICA,

Respondent,

vs.

CRIMINAL ACTION NO. 3:02-00231
(CIVIL ACTION NO. 3:04-1001)

JOHN DAVID MOONEY,

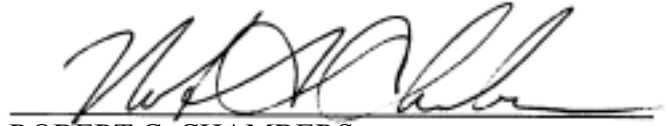
Petitioner.

ORDER

In his objections to the Magistrate Judge's findings and recommendation, Petitioner, John David Mooney, included an application for a certificate of appealability if the Court denied his objections and dismissed the petition. The Court in an Order dated August 23, 2006, denied relief on his petition filed under 28 U.S.C. § 2255. Therefore, currently pending before the Court is Petitioner's, application for a certificate of appealability. This Court has once again reviewed the record and concludes that Petitioner has not made a substantial showing of the denial of a constitutional right and has not presented issues "adequate to deserve encouragement to proceed[.]" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, n. 3 (1983)). *See also Miller-El v. Cockrell*, 537 U.S. 322 (2003). Accordingly, Petitioner's application for a certificate of appealability is **DENIED** and the appeal is **DISMISSED**. *See* 28 U.S.C. § 2253(c).

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel and the defendant, the U.S. Attorney's Office, the U.S. Probation Office, and the U.S. Marshal's Service.

ENTER: August 28, 2006

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE